

*a*

PATRICK RAO

v.

SUBRAMANIAM PUTTA MUNUSAMY &amp; ORS.

HIGH COURT MALAYA, KUALA LUMPUR

SITI NORMA YAAKOB J

*b*

[CIVIL SUIT NO. F 623 OF 1984]

12 FEBRUARY 1988

**CIVIL PROCEDURE:** *Injunction - Injunction to prohibit sale of land - Dispute between beneficiary and trustees - Whether injunction should be dissolved.*

*c*

This was an application by the defendants to set aside an injunction. The respondent contended that the defendants held certain land as trustees and that he was a beneficiary of that trust. The said land was purchased in 1975 with the intention of developing it into a housing estate. It was agricultural land at the time of the purchase and it was intended that it be converted and subdivided. 100 purchasers including the respondent and excluding the first to fourth applicants contributed towards the purchase of the said land. However, the first to fourth applicants included themselves as beneficiaries of the said trust. The said land had still not been converted more than 12 years after it was purchased. An amendment to the National Land Code which came into effect on 1 June 1985 prohibited the issue of separate titles of agricultural land of less than one acre in size. Since the said land was subject to the said prohibition, the applicants enter into negotiation for the sale of the said land. The respondent obtained an injunction to restrain the applicants. The grounds of the application were that there was inordinate delay by the respondent of 7 months in serving the injunction; there was duplicity of proceedings as the respondent had filed another suit, the land would not be subdivided; and that the state government would not approve the housing scheme as it was under the flight path of aeroplanes.

*d**e***Held:***f*

[1] The applicants could not plead that there had been a delay by the respondent in serving the injunction as they had taken 1 year 3 months to file the present application.

[2] The parties in both suits were not the same although the same remedies were sought. That was not a ground for setting aside the injunction.

*g*

[3] There was a dispute as to the entitlement of the first to fourth respondents in the said land. The status of the third and fourth defendants as trustees was an issue. Thus, the *status quo* of the parties had to be maintained.

[4] The prohibition in s. 205(3), National Land Code against subdivision of the said land was not a ground for setting aside the injunction.

[5] There was no merit in the applicant's contention that the State Government would not approve the housing scheme.

*h*

[Application dismissed with costs.]

**Legislation referred to:**

National Land Code 1965, s. 205(3).

For the defendants/applicants - G. Vadiveloo; M/s. Vadiveloo & Co.

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For the plaintiff/respondent - G. Vargheese; M/s. Syarikat Richard Ho

JUDGMENT

Siti Norma Yaakob J:

In this suit, the plaintiff claims that principally as a beneficiary of a resulting trust, he is entitled to be declared so, as well as entitled to his respective share of a piece of land over which the defendants hold as trustees.

It is not disputed that the land in dispute is agricultural land and was purchased on 25 April 1975 to better the lot of the Indian community. To that end, there was every intention of developing it into a housing estate for which conversion and subdivision would become necessary and individual titles ultimately issued to the purchasers who are the plaintiff and 99 other persons. They each contributed sums varying from RM3,000 - RM3,500 for their respective shares and these were paid to the 1st to 4th defendants who were and are still office bearers of the 5th defendant. However, the sale and purchase agreement was executed by the 1st to 4th defendants as purchasers in their capacity as trustees of the 5th defendant and receipts of the sums collected from the 100 purchasers were issued by the 5th defendant.

In a letter dated 12 June 1980, the present solicitors for the 1st to 4th defendants indicated to the plaintiff that the 1st to 4th defendants would, upon registration of the memorandum of transfer, execute a trust in favour of all the 100 purchasers and that the plaintiff's entitlement to the land will be 1/104 share. From this letter, it is very clear that the 1st to 4th defendants who did not contribute anything to the purchase price in the first place, had also included themselves as beneficiaries under the proposed trust to be created. The contents of this letter, however, run contrary to the sale and purchase agreement as well as the declaration made by the 1st to 4th defendants in their letter dated 16 November 1979, wherein, they had declared that the land had been purchased by members of two branches of the 5th defendant and that they, the 1st to 4th defendants, hold the land as trustees for the 5th defendant.

More than 12 years after its purchase, the land has still not been converted or subdivided into housing lots as its location to Subang Airport made it not feasible for such conversion and subdivision and as for the issue of separate titles to the plaintiff and the other 99 purchasers, this has now become impossible by virtue of s. 205(3) of the National Land Code that forbids the issue of separate titles to agricultural land less than 1 acre in size. For these reasons the defendants have negotiated and found a 3rd party who is willing to purchase the property from them. To protect his interest, the plaintiff had, on 27 May 1985, obtained an injunction, *ex parte*, to restrain the defendants, their servants or agents, from dealing with the land in whatsoever manner.

A year and ten months after the injunction had been obtained, the defendants applied *inter alia* to have it set aside on the following grounds.

1. Delay in the service of the injunction.
2. Duplicity of actions as the plaintiff had already filed an earlier suit seeking the same remedies.
3. Circumstances have changed to warrant the dissolution of the injunction.

Although the *ex parte* injunction was obtained on 27 May 1985, it was only served on the defendants almost 7 months later on 7 December 1985. No reason was given by the plaintiff for this unusually inordinate delay especially when it was obtained *ex parte*, on a Certificate of urgency.

- a** Just as the defendants complain that this delay is fatal, the defendants have also not been conducting their affairs speedily, for it took them another 1 year and 3 months after service of the injunction on them to file the notice of motion, *inter alia*, to have the injunction set aside. They justify this delay to their attempts with the plaintiff to have the matter amicably settled. As both parties had been rather lax in enforcing their rights, I had considered that neither of them can plead delay against the other, as a ground for dissolving or retaining the injunction. Attempts at settlement may well be the very cause of the delay that prevented either party from enforcing their rights promptly.

- b**
- c** In his affidavit in support of his application for the injunction, the plaintiff had disclosed that two of the purchasers representing 78 other purchasers including himself had earlier filed civil suit F. 261/81 against the 1st to 4th defendants seeking similar remedies as in this case before me. The 5th defendant was not made a party to that earlier action but reference was made to it as the plaintiffs have pleaded that they are members of the 5th defendant. Proceedings in that earlier action had advanced to the stage where the plaintiffs had applied for summary judgment under O. 81 but that application was dismissed and the suit is still pending.

- d** The defendants now rely on this earlier civil suit to plead that since there is a duplicity of actions, the plaintiff is debarred from seeking any relief in the suit before me in his personal capacity and that being so, the application for the injunction should not have been entertained.

- e** Admittedly there are 2 pending actions pertaining to the same dispute, the only difference being that in the earlier action, the suit was filed by 2 purchasers in their personal capacities as well as representing 78 other purchasers including the plaintiff. Another difference is that the 5th defendant was not cited a party. In the suit before me, the plaintiff sues in his personal capacity and has cited the 5th defendant as one of the defendants. He also denies that he is a member of any branch of the 5th defendant.

- f** As far as I am concerned, since both suits seek practically the same remedies, the most justifiable and practical solution is to have both suits consolidated and tried as one action, and it is my considered opinion their presence alone cannot be relied upon as a ground for dissolving the injunction. This is so as there are disputed facts disclosed in the affidavits. To begin with there need to be established by evidence whether the plaintiff in this suit before me is a member of any of the branches of the 5th defendant. There is no specific denial of this by the defendants in their affidavit in support of their application to have the injunction set aside but their Counsel in his submission before me drew my attention to the statement of claim in the earlier action wherein the plaintiff has admitted being a member of the 5th defendant.

- g**
- h** Then again there is the dispute over the entitlements of the purchasers. Clearly the pleadings show that the funds for the purchase of the land came from the plaintiff and 99 others. Neither any of the defendants had contributed to the purchase price and yet the 1st to 4th defendants have declared the plaintiff's entitlement as being 1/104 thereby giving themselves a share of the land.

- i** The defendants have admitted that there is a resulting trust for the 100 purchasers but who in law are the trustees of such a trust. In an undated letter which has been exhibited by the defendants in their affidavit, written by the 5th defendant and which was received by their present solicitors on 8 August 1979, the 5th defendant has named 4 persons, two of which being the 1st and 2nd defendants, as being its trustees to deal with all matters pertaining to

the land. But a transfer dated 4 September 1979 and the declaration of trust dated 16 November 1979 were all executed by the 1st to 4th defendants as trustees of the 5th defendant and apart from the 1st and 2nd defendants the 3rd and 4th defendants are not the duly appointed trustees of the 5th defendant. All these disputed facts can only be resolved by oral evidence and their presence alone is all the more reason that the *status quo* of the parties be maintained until such disputes have been resolved.

Yet another ground pleaded by the defendants why they should be free to deal with the land is the introduction of s. 205(3) of the National Land Code which forbids the issue of separate titles of agricultural land of less than one acre in size. Needless to say, this prohibition became law on 1 June 1985 but the defendants cannot plead this change in law as a circumstance to warrant the setting aside of the injunction. They must remember they had purchased the land in 1975, and although the permission to transfer was only given by the Estate Land Board on 3 May 1979, and the Memorandum of Transfer executed on 4 September 1979, yet nothing was done by them up to the imposition of the prohibition under s. 205(3).

I also attach no merit to the defendants' contention that no housing scheme will be entertained by the State Government as the land lies directly under the flight path of aeroplanes landing and taking off at Subang Airport. Such a contention is immaterial and irrelevant and at most, I consider such a plea as being short sightedness on the part of the defendants, who as champions for the landless had embarked on the housing scheme to better the lot of their own community.

As there were no concrete and tangible reasons given why the injunction should be set aside, I had accordingly dismissed the defendants' application with costs.

Also found at [1988] 1 CLJ 831

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